IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7094 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

YOGENDRASINH ALIAS LALO MOHANSING SHAKWAT

Versus

STATE OF GUJARAT

Appearance:

MS JAYSHREE C BHATT for the Petitioner.

Ms.Archana Raval, Assistant GOVERNMENT PLEADER, for Respondent Nos. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 9th March, 2004,

by which he is detained as a 'bootlegger' under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the detenu is served with the grounds of detention. In the grounds of detention, there is a reference of a solitary case registered against the petitioner.

The Authority, after considering the said case, in which it is alleged that the petitioner is dealing in foreign liquor, and considering the statements of two witnesses, whose names have not been disclosed to the petitioner, has detained the petitioner under PASA.

The learned Advocate for the petitioner submitted that the order of the detaining authority and the grounds of detention do not indicate the basis of arriving at the subjective satisfaction. The learned Advocate very vehemently submitted that the authority, at the time of claiming privilege under Section 9(2) of PASA, has not disclosed the names of witnesses. A mere statement about having verified the veracity, genuineness and correctness of the fear expressed by the witnesses, under such circumstances, can be of no virtue, in absence of contemporaneous material. She, therefore, submitted that the order of detention stands vitiated for want of proper exercise of powers under Section 9(2) of the PASA and resultant infringement of a constitutional right of the detenu of making an effective representation due to non-disclosure of names of the witnesses.

To substantiate the above contention, the learned Advocate for the petitioner has relied upon the decision of this Court in Kishor Naginbhai Parmar v. State of Gujarat & Ors., 2000 (4) GLR 3236, wherein this Court (Coram : A.L. Dave, J.) held as under :-

" ... ...

14. In this view of the matter, the order of the detaining authority and the grounds of detention do not indicate the basis of arriving at the subjective satisfaction. A mere statement about having verified the veracity, genuineness and correctness of the fear expressed by the witnesses, under such circumstances, can be of no virtue, in absence of contemporaneous material. The detention therefore stands vitiated for want of

proper exercise of powers under Section 9(2) of the PASA Act and resultant infringement of a constitutional right of the detenu of making an effective representation due to non-disclosure of names of the witnesses. The order of detention, therefore, deserves to be quashed and set aside by allowing this petition.

... ..."

Relying on the above decision, it is submitted by the learned Advocate for the petitioner that there has to be some credible material on record for withholding the names of the witnesses, such as, antecedents of the detenu, etc. Since this exercise has not been undertaken in this case, regarding finding out the antecedents of the detenu and since there is no credible material, the exercise of power under Section 9(2) of PASA can be said to have been vitiated.

It is required to be noted that there is a solitary case, by which it cannot be said that there is violation of public order. As such, the said case can be dealt with under the ordinary criminal law. Under the circumstances, since the power under Section 9(2) of PASA has not been properly exercised, the order of detention is vitiated and, therefore, the petition is required to be allowed.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. The Rule is made absolute accordingly.

At this stage, the learned Advocate for the petitioner submitted that the petitioner will not enter Meghaninagar Police Station area upto 31st October, 2004, in case he is released on bail by the competent court. This voluntary statement is recorded. It is for the Police Authority to monitor the same. Ms.Archana Raval, learned AGP, submitted that the State will oppose the bail application. Naturally, if any bail application is preferred, the State can also oppose such application on merits. It is for the concerned Magistrate to decide the bail application on is own merits. This Court is not required to express any opinion on the said aspect. So far as the condition that the petitioner will not enter Meghaninagar Police Station area for two months is

concerned, that will be applicable only if the Magistrate releases the petitioner on bail and not otherwise.

(P.B. Majmudar, J.)

***

(apj)